

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CHARLES SWINT,)	
Plaintiff,)	
)	C.A. No. 23-232 Erie
)	
v.)	
)	District Judge Susan Paradise Baxter
L. J. OLIVER, et al,)	Chief Magistrate Judge Richard A. Lanzillo
Defendants.)	

MEMORANDUM ORDER

Plaintiff, an inmate incarcerated at the State Correctional Institution at Albion, Pennsylvania (“SCI-Albion”) initiated this *pro se* civil rights action by filing a complaint, which includes a motion for preliminary injunction, with the Commonwealth Court of Pennsylvania, on or about April 6, 2023. [ECF No. 1-1]. The Commonwealth Court transferred the matter to the Court of Common Pleas of Erie County, Pennsylvania, and Defendants subsequently removed the matter to this Court pursuant to a Notice of Appeal dated August 8, 2023. [ECF No. 1]. The matter was referred to Chief United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

Presently pending before the Court is Plaintiff's motion for preliminary injunction (ECF No. 1-1, pp. 5-11, which has been separately docketed at ECF No. 6). The motion seeks an injunction ... for unsafe conditions to await a tragic event, such as an actual assault ... to prevent a substantial risk of serious injury ... on top of the actual assaults that happened already." (ECF No. 1-1, at p. 8). The motion is based on allegations of Plaintiff's complaint, which claim that

Plaintiff's "life has been in danger" and that he has been repeatedly assaulted and extorted for money by other inmates since 2021 after prison officials allegedly "had [him] tell on other inmates regarding drugs." (*Id.* at p. 11).

On September 20, 2023, Chief Magistrate Judge Lanzillo conducted an evidentiary hearing regarding Plaintiff's injunction request, at which time both Plaintiff and Defendants offered testimony. [ECF No. 16]. Based on the testimony elicited during the hearing, Judge Lanzillo issued a Report and Recommendation ("R&R") on September 21, 2023, recommending that Plaintiff's motion for injunctive relief be denied because he has failed to demonstrate either a substantial likelihood of success on the merits or an imminent risk of irreparable harm [ECF No. 17]. Plaintiff has since filed timely objections to the R&R [ECF No. 18], in which he raises additional concerns related to circumstances that have occurred since the time of the evidentiary hearing. However, these matters were not before Judge Lanzillo when he made his recommendation, and have been presented here, for the first time, on objections. Thus, they will not be considered. *See Murr v. U.S.*, 200 F.3d 895, 902 n.1 (6th Cir. 2000) (collecting cases and noting that "absent compelling reasons, [the Magistrate Judge Act] does not allow parties to raise at the district court stage new arguments or issues that were not presented to the magistrate"). Plaintiff may file a new motion based on these events.

After *de novo* review of the motion and relevant documents in the case, together with the report and recommendation and objections thereto, the following order is entered:

AND NOW, this 19th day of October, 2023;

IT IS HEREBY ORDERED that Plaintiff's motion for injunctive relief [ECF No. 6] is DENIED. The report and recommendation of Chief Magistrate Judge Lanzillo, issued September

21, 2023 [ECF No. 17], is adopted as the opinion of the court.


SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
Chief U.S. Magistrate Judge